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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 412

PEOPLE OF THE STATE OF ILLINOIS, ON RELATION OF GEORGE E. SANKSTONE,

Appellant,

vs.

EDMUND K. JARECKI, JUDGE OF THE COUNTY COURT OF COOK COUNTY, ILL., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

FRANK MICHELS,
Counsel for Appellant.

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Appellant,

vs.

EDMUND K. JARECKI, ET AL., ETC.

JURISDICTIONAL STATEMENT OF APPELLANT

The People of the State of Illinois, on relation of George E. Sankstone, present this jurisdictional statement in accordance with the provisions of Rule 12 of the Rules of this Court.

Reference to the Federal Statutory Provision Believed to Sustain This Court's Jurisdiction on Direct Appeal

Jurisdiction by direct appeal to the United States Supreme Court is believed to be sustained by Section 1253 of the new Judicial Code (28 USC Sec. 1253), effective September 1, 1948, which provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an inter-

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locutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

This is a case involving the denial, after notice and hearing, of an interlocutory injunction and restraining order the dismissal of the complaint in a civil suit assailing as unconstitutional a state statute and therefore required to be heard and determined by a district court of three judges.

The appellant sought in his complaint and motion for an interlocutory injunction and restraining order to restrain the enforcement and operation of a state statute by restraining the action of county officers in the application of a ruling made by a county electoral board acting under such statute, on the ground that the statute involved was unconstitutional. A suit of this type must be heard and determined by a three-judge district court pursuant to Section 2281 and 2284 of the new Judicial Code.

Reference to the Statute of Illinois the Validity of Which Is Involved

The constitutional question to be presented, if this appeal is allowed, is whether or not that part of Section 2 of Article 10 of the Illinois Election Code (Ill. Rev. Stat., 1947, Chap. 46, Sec. 10-2) added by amendment in 1947, is in conflict with the United States and Illinois Constitutions, and particularly Sections 2 and 4 of Article 1. Section 1 of Article 2, Amendment XVII, and the privileges and immunities, equal protection, and due process clauses of Amendment XIV of the United States Constitution, and Section 18 of Article II of the Illinois Constitution which provides that "All elections shall be free and equal."

Section 2 of Article 10 of the Illinois Election Code pertains to the forming of new political parties and the nomi-

nation of candidates of said parties. Said section provides, among other things, that at least 25,000 qualified voters sign a document authorized and prescribed by the statute and usually called a Declaration of Intention to Form a New Political Party and a Petition to Nominate Candidates of Said Party (Ill. Rev. Stat., Chap. 46, Sec. 10-2). The said section further provides that if such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than five per cent nor more than eight per cent of the number of voters who voted at the next preceding general election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area. Under the ruling of the Cook County Officers' Electoral Board, the proposition was urged that it was necessary for this candidate to have between 121,406 and 194,249 signatures for an office in Cook County, Illinois, one of the counties of the State of Illinois, and less than the entire State, whereas a provision for the entire state is 25,000 signatures, of which the signatures of 200 qualified voters of at least 50 counties within the state may be included. It is the validity of this statute which is herein involved, the question being whether or not a statute which prescribes a total of 25,000 signatures necessary for the entire state is valid as against a requirement of between 121,406 and 194,249 signatures for one of the counties of said State.

Reference to the Date of the Judgment Sought to Be Reviewed and the Date upon Which the Application for Appeal Was Presented.

The order of the district court denying the motion for an interlocutory injunction and restraining order and dismissing the complaint was rendered on September 28, 1953. The

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court also refused on that date to call a three-judge panel. No petition for rehearing was filed.

Application for a hearing to the Supreme Court of the United States was presented to the District Court of the United States for the Northern District of Illinois, Eastern Division, and granted on October 6, 1953.

Statement of the Case and the Rulings of the Court Which Brings the Case within the Jurisdictional Provisions Relied Upon.

The order of the District Court was entered on the Complaint and motion for an interlocutory order. Motions to dismiss the complaint for want of jurisdiction were filed or concurred in by all of the defendants herein. Thus, for the purpose of the disposition of the matter under said motion, the allegations of the complaint would be taken as true.

Proceedings Before the County Officers Electoral Board

On August 17, 1953, there was filed in the office of the County Clerk of Cook County, Illinois, a *Declaration of Intention to Form a New Political Party* and a *Petition to Nominate George E. Sankstone for the Office of Judge of the Superior Court of Cook County*, for the election to be held on November 3, 1953. The petition bore more than 5,000 signatures. Objections to the sufficiency of the said petition were filed by one objector, namely, Leah M. Wiley, made one of the defendants herein. The principal contention of the objector was that the petition did not contain a sufficient number of signatures, the objector expressly raising the point that the number of signatures required under the statute should be from 5% to 8% of the last general election, and naming by said objector between 121,406 and 194,249 signatures. Other insufficiencies were alleged, but were not expressly urged, excepting the number of signatures as here-

tofore set forth. The objector, in other words, relied upon the point that this candidate did not have between 121,406 and 194,249 signatures on his nominating petition.

The Cook County Officers' Electoral Board, met as provided for in Article 10 of the Illinois Election Code to determine the sufficiency of the nominating petition (Complaint paragraph 9). The issue presented for decision before the Board was whether the said party nominating petition complied with the provisions of section 2, Article 10 of the Illinois Election Code.

At that hearing, as provided by statute, the said Cook County Electoral Board must consist of the county judge, the county clerk, and the county states attorney. The County Judge and the States Attorney of Cook County were present, but the County Clerk of Cook County was not present, but was represented by a deputy, not an officer. An objection was raised by this plaintiff as to the constituency of the Board. The Board, over the objection of this plaintiff, the said candidate, presided at that hearing and then continued the hearing to August 31, 1953 (Complaint, para. 10). On August 31, 1953, the said Board, after hearing certain evidence, held that the nominating petition of this plaintiff does not contain a sufficient number of signatures to equal at least 5% of the total number of persons who voted in the last presidential general election of Cook County. Wherefore, the said party nominating papers of the said candidate are invalid, and that the objection thereto should be sustained, and the name of the said George E. Sankstone should not be printed on the ballot for the judicial election to be held on November 3, 1953. (Exhibit B of Complaint)

At that hearing, the results of two (2) elections were urged before the Board by the objector—one held on June 2, 1952, and another on November 3, 1952. Further, after the close

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of the evidence, the objector did not even qualify that she was a valid objector, showing that she was a citizen of Cook County, Illinois, and a qualified voter of Cook County, Illinois. The said Board permitted her, after the close of the hearing, to enter her evidence. (Par. 13, 14, 18)

Thus it is clear that the only reason that this candidate was ruled off the ballot was the insufficiency of the nominating petition in one regard, and one regard only: That the candidate lacked a sufficient number of names—at least 121,406 signatures. The Board sustained no other objection and made no other findings as to the petition's sufficiency (Complaint, Exhibit B)

The statute of the State of Illinois in question provides for 25,000 signatures for a nominating petition for a statewide office, which embraces 102 counties in the State of Illinois. In one county of the State of Illinois the Board found that a minimum of 121,406 signatures are necessary for a nominating petition.

This plaintiff further urged before the Board the fact that the office of Judge of the Superior Court of Cook County, Illinois (Complaint para. 20) is a state office and not a county office and, therefore, said Board had no jurisdiction. This was not passed upon by that Board.

Following this ruling, this plaintiff filed his original petition for mandamus on September 8, 1953, before the Supreme Court of the State of Illinois to mandamus these defendants so that the name of this plaintiff would be placed in its proper position on the ballot, and covering all of the matters and points involved, and also raising the point that the said Board had no jurisdiction to hear these objections, because a state office was involved. (Par. 27)

The Supreme Court of the State of Illinois refused to hear the petition for mandamus and dismissed the motion of this plaintiff to hear this matter. A motion was made for recon-

sideration before the Supreme Court of Illinois, which was denied. Under the Illinois Constitution, the Illinois Supreme Court has original jurisdiction in mandamus. The appellant's efforts to get the Illinois Supreme Court to exercise that jurisdiction represented his sole practical opportunity for redress in the Illinois state courts as time was, and is, of the essence in these proceedings, as ballots are about to be printed.

The Illinois Supreme Court on September 16, 1953, and September 22, 1953, denied the said motions of plaintiff for mandamus, giving no grounds for its actions.

The Suit in the District Court

On September 21, 1953, the plaintiff filed this complaint for declaratory and injunctive relief in the District Court of the United States for the Northern District of Illinois, Eastern Division. The plaintiff did not attempt to review the rulings of the Illinois Supreme Court in view of *White* v. *Ragen*, 324 US 760 (1945). The complaint raised the question previously sought by motion in the Illinois Supreme Court, and prayed an interlocutory injunction in effect requiring the defendant election officials to place the name of this candidate on the ballot for the next election on November 3, 1953. The cause was assigned to the Honorable William J. Campbell, District Judge.

A hearing on the plaintiff's motion for an interlocutory injunction was had on September 28, 1953. Arguments were had before the Court.

On September 28, 1953, the Court rendered its decision denying the motion for an interlocutory injunction and restraining order, denying the plaintiff's motion to impanel a three-judge District Court, and dismissed the complaint. A copy of the ruling of the Court is appended to this Statement of Jurisdiction.

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Cases Believed to Sustain Jurisdiction

From the above brief summary of the proceedings thus far it is clear that this case, from a jurisdictional standpoint, is very much like the recent case of *Colegrove* v. *Green*, 328 US 549 (1946). In that case a complaint for declaratory and injunctive relief was filed in the District Court claiming that the Illinois Congressional Apportionment Act of 1901 was in contravention of the Constitution and laws of the United States by denying equality of voting power to citizens living in disproportionately large Congressional Districts, an issue strikingly similar to that presented here. The three-judge district court denied the relief requested and dismissed the complaint on the merits. A direct appeal was thereupon taken to the United States Supreme Court pursuant to Section 266 of the Judicial Code, since superseded by Section 1253 of the New Judicial Code.

In addition the following cases support jurisdiction:

Wood v. *Broom;* 287 U.S 1 (1932)
Sterling v. *Constantin*, 287 US 378 (1932)
Oklahoma v. *Atkinson Co.*, 313 US 508 (1941)
West Virginia Board of Education v. *Barnette*, 319 US 624 (1943).

A Showing That the Questions Involved Are Substantial

The questions involved herein are extremely substantial and involve the rights of the public. The statute, section 10-2 of the Illinois Election Code, states that 25,000 valid signatures suffice for a state-wide election; under the ruling of the Cook County Officers' Electoral Board, they would provide that in order to form a new political party for an office involving only Cook County, Illinois, it would be necessary to have between 121,406 to 194,249 signatures; thus, one county of the 102 counties of the State of Illinois requires between five (5) times to eight (8) times the

number of required signatures for the entire State of Illinois, if this section of the Statute is held valid. Further, putting it in a different light, for a state-wide office the requirement is 200 signatures from at least 50 counties, making a total of 10,000 signatures, leaving only 15,000 signatures from the balance of the State of Illinois, namely, 52 counties. The requirement therefore, if the ruling in this case is permitted to stand, would require a petition for Cook County to have between 121,406 to 194,249 signatures, and 15,000 from 52 counties of the State of Illinois.

Nomination by petition under Article 10 is the only way new-party candidates and independent candidates can be nominated in Illinois. Voters who do not wish to participate in either the Democratic or Republican primaries have no other opportunity to select candidates except under Article 10 in the State of Illinois.

Fully to appreciate the effect of this section requires a consideration of several facts as to the distribution of population of Illinois:

> There are 102 counties in the State of Illinois, of which one is Cook County. The other 101 counties of the State of Illinois contain better than 90% of the area of the State of Illinois; thus, under this section of the statute, 10% of the area of the State of Illinois would require signatures of between five (5) and eight (8) times the number of signatures required for the entire state for nomination into office.

Further, putting it on a population basis: The population of the State of Illinois is approximately equally divided between Cook County and the balance of the State. On a population basis, it is only necessary to have 25,000 signatures for the State of Illinois, and the same section of the statute would require between five (5) and eight (8) times that number of signatures for a section comprising one-half of the population. Thus, this section of

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the statute expressly appear pervious and prohibits the forming of a new political party in the state, and from nominating candidates for office in such county. The ultimate consequence of this section is to make the influence of a qualified voter in Cook County of far less influence than in the rest of the State of Illinois.

If it were placed on a population basis, the number of signatures required from Cook County should be one-half (½) of the number of signatures for the entire State of Illinois.

If placed on an area basis, the number of signatures should be 10% of the number of required signatures for the entire State of Illinois.

If it should be placed on a county basis, the number of signatures should be one one-hundredth of the number of signatures for the entire State of Illinois.

Thus, the Illinois General Assembly, by enacting this provision of the statute, discriminated against voters in Cook County who might wish to form a new political party and a nominating candidate on petition under Article 10 of the Election Code, for it imposes on these voters a rigid and arbitrary requirement for the number of signatures, which is so far out of proportion as to shock the common conscience.

Giving the facts as aforesaid, it is clear that these obstacles so affect the rights of the voters, that it makes it impossible for a voter in Cook County to form a new party, or makes it impossible to have voters to vote for a candidate of their own choice, outside the existing political parties. In other words, it entrenches the power of the existing political parties, and imposes extremely difficult requirements to form any new parties, or place candidates on the ballot outside the existing political parties. Thus, a statute works its discrimination in this way: To file a nominating petition for a governor of the State of Illinois

would require only 25,000 signatures, but to file a nominating petition for an office of Cook County requires between 121,406 to 194,249 signatures. The question of the conflict between Article 10-2 of the Illinois Election Code and section 4 of Article 1, Amendment XVII, and the Privilege and Immunities clauses of Amendment XIV of the United States Constitution is a substantial federal question.

a. The right to vote for Senators and Congressmen is a right protected by the United States Constitution, specifically Sections 2 and 4 of Article I and Amendment XVII.

Ex parte Yarbrough, 110 U. S. 651 (1884);
Wiley v. *Sinkler*, 179 U. S. 58 (1900);
United States v. *Classic*, 313 U. S. 299 (1941).

b. The right to nominate candidates for the United States Senate and the House of Representatives, by primary or by petition, is a right protected by the United States Constitution. As the Illinois Supreme Court has said, *People* v. *Election Commissioners*, 221 Ill. 9, 18 (1905):

> ". . . The right to choose candidates for public offices whose names will be placed on the official ballot is as valuable as the right to vote for them after they are chosen, and is of precisely the same nature."

The United States Supreme Court has held that where the state law makes the primary an integral part of the procedure of choice for representatives to Congress, the right to vote in the primary is a right protected by the United States Constitution.

United States v. *Classic*, 313 U. S. 299 (1941);
Smith v. *Allwright*, 321 U. S. 649 (1944).

In Illinois nomination by petition under Article 10 of the Illinois Election Code is just as much an integral part of the procedure of choice as nomination at a primary elec-

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tion under Articles 7 and 8. In fact nomination by petition under Article 10 is the only means open to voters who do not wish to participate in either the Republican or Democratic primaries or who wish to endeavor to form a new party or to nominate independent candidates. The protection afforded by the *Classic* and *Allwright* cases would seem necessarily to cover this alternative method of nomination.

c. Section 2 of Article 10 abridges the privileges of citizens of the United States. The section denies a right of qualified voters, even a majority of qualified voters of the county under Article 10 of the Illinois Election Code.

2. The question of the conflict between section 2 of Article 10 of the Illinois Election Code, and the equal protection clause of the United States Constitution is a substantially federal question.

The two "white primary" cases of *Nixon* v. *Herndon*, 273 U. S. 536 (1927), and *Nixon* v. *Condon*, 286 U. S. 70 (1932), may be said to stand for the proposition that the denial of the right to vote because of race constitutes a denial of equal protection. Here, although the discrimination is not based upon race or color, it is equally arbitrary. On the face of the said section there is gross discrimination of the citizens of the State of Illinois, particularly those residing in populous areas, in their right to nominate candidates for any state-wide office. Particularly, there is discrimination against the citizens of Cook County, who comprise over half the total population of the state. There is likewise discrimination against voters who do not wish to affiliate with one of the established parties.

As Mr. Chief Justice Stone wrote in *Snowden* v. *Hughes*, 321 U. S. 1, 11 (1944):

> "Where discrimination is sufficiently shown, the right to relief under the equal protection clause is not

diminished by the fact that the discrimination relates to political rights."

4. The question of the conflict between the section 10-2 of Article 10 of the Illinois Election Code and Amendment XVII to the United States Constitution is a substantial federal question.

Amendment XVII provides for the popular election of United States Senators. To be sure, the qualifications for electors are determined by the individual states, but the clear and plain meaning of the amendment in requiring that Senators be "elected by the people" of each state is that they shall be elected by popular vote, that is, by a majority (or plurality) of the voters participating.

The nomination of candidates for the office of United States Senator must meet those same standards. This would certainly seem to be the plain requirement of *United States* v. *Classic*, 313 U. S. 299 (1941), in those instances where the nominating process is an integral part of the election procedure.

Under the Illinois Election Code, nomination by primary is by popular vote, with the candidate receiving the highest number of votes winning the nomination. There is no requirement as to the geographical distribution of those votes. Yet with regard to the nomination of new-party candidates or independent candidates for United States Senator under Article 10 of the Illinois Election Code there is a geographical requirement: No one can be nominated by this method unless he receives, included in the minimum of 25,000 valid signatures, at least 200 signatures from each of at least 50 counties. He might secure 4,000,000 signatures on his nominating petition, but unless he had at least 50 counties, he would not be nominated.

Since the State of Illinois has authority to pass such legislation, and since the State is an agent of the Federal

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Government, it is substantially a question for determination by this Court.

A Showing That the District Court Abused Its Discretion in Denying the Interlocutory Injunction

As should be clear, there are substantial arguments as to the unconstitutionality. In denying and dismissing the complaint and denying to call a three-judge panel, the court decided adversely to plaintiff's substantial constitutional argument.

The appellant believes that there is real merit to the constitutional objections to the statutory provision which is barring this candidate from the ballot in Illinois. Involved is the basic democratic right of a group of citizens to access to the ballot for the purpose of nominating candidates of their choice on reasonable and non-discriminatory terms, requires execution on its merits by this court.

A Showing That the Appellant Has Been Diligent in Seeking a Judicial Remedy

The opinion of the Cook County Officers' Electoral Board was handed down on August 31, 1953. On September 8, 1953, this appellant filed his motion for leave to file a petition for mandamus in the Illinois Supreme Court in an effort to raise the constitutional issues here presented. The motion was denied on September 16, 1953.

On September 18, 1953, this appellant filed his motion for reconsideration before the Illinois Supreme Court in an effort to adjudicate this issue. The motion was denied on September 22, 1953.

This appellant filed his complaint in the United States District Court. Hearing was held on September 28, 1953, and a decision rendered on the same day. The appellant appealed on October 5, 1953.

For the reasons urged in these suggestions, it is submitted that this Court has jurisdiction of direct appeal and that substantial Federal questions are presented.

Respectfully submitted,

FRANK MICHELS,
Attorney for plaintiff-appellant.

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APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 53 C 1939

PEOPLE OF THE STATE OF ILLINOIS on Relation of George E. Sankstone, *Plaintiff*,

vs.

EDMUND K. JARECKI, County Judge, et al., *Defendants*

Transcript of proceedings had at the hearing of the above-entitled cause before Hon. William J. Campbell, one of the judges of said court, in his court room, U. S. Court House, Chicago, Illinois, on Monday, September 28, 1953, at four o'clock P. M.

Present: Mr. George Yellen, appeared on behalf of the Plaintiff; Mr. Ben Schwartz, Assistant Attorney General, Mr. Bernard J. Korzen, Mr. John F. Tyrrell, and Mr. Vincent P. Flood, Assistant States Attorney, appeared on behalf of the Defendants.

(Following argument by counsel, which was reported but not transcribed, the following is the ruling of the Court:)

By the COURT:

Plaintiff styles his complaint as one "in the nature of a mandamus proceeding and for equitable relief." The complaint alleges in substance, that the plaintiff is a resident and citizen of the State of Illinois and of the United States, and a duly qualified and registered voter in the County of Cook and State of Illinois; that on August 17, 1953, plaintiff filed certain petitions with the Honorable Richard J. Daley, County Clerk of Cook County, Illinois; that these petitions entered the plaintiff as a new party candidate under the designation of Judicial Non-Partisan Organization, as candidate for Judge of the Superior Court of Cook County,

Illinois, for the full six-year term to be voted on at the judicial election to be held in Cook County on November 3, 1953; that these petitions conformed in all respects to the requirements outlined in the Illinois Election Code, Ill. Rev. Stat., Ch. 46, Sec. 10-2: that the nominating petitions were duly accepted and filed with the said Richard J. Daley, together with a certificate of candidacy of plaintiff, accepting the nomination; and that on August 21, 1953, one Leah M. Wiley filed certain objections to the nominating petitions.

The complaint further alleges that the Sheriff of Cook County failed to notify plaintiff of the time and place the electoral board would meet to hear the objections to his petitions, as provided by Illinois statute; that the Chairman of the electoral board failed to notify the members of the board and the plaintiff of the hearing on the petitions and the objections within the time specified by statute; that a hearing was held before the electoral board on August 27, 1953, for the purpose of ruling on the objections to plaintiff's petitions, but that the hearing was held improperly because of the absence of Richard J. Daley, one of the members of the Board; that the hearing was commenced over plaintiff's objection, and then continued for further hearing to August 31, 1953; that at this further hearing, the full electoral board was present; that plaintiff then objected that the hearing was illegally constituted, since Richard J. Daley had not been present at the first hearing, and, in the alternative, since the board did not convene within the time specified by the Illinois Election Code; that the hearing was nevertheless held by the Board, and its decision was announced on September 2, 1953.

The decision of the electoral board is attached to and made part of the complaint. The board found that "the Nominating Petition of the plaintiff does not contain a sufficient number of signatures to equal at least five percent (5%) of the total number of persons who voted at the next preceding General Election in Cook County." On the basis of this finding, the board sustained the objections to plaintiff's nominating petitions, and ordered that plaintiff's name should not be printed on the ballot at the judicial election to be held on November 3, 1953.

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The complaint also contains several lengthy descriptions of the Illinois Election Code, with particular emphasis upon Section 10-2 of Chapter 46, which prescribes the manner in which new parties may be formed within the State. The complaint alleges that this Section of the Code is unconstitutional.

Plaintiff concludes his complaint with a prayer for declaratory and injunctive relief. He asks this court to declare that he has been denied due process of law, in that his constitutional right to become a candidate for judge of the Superior Court of Cook County has been violated; that Section 10-2 of Chapter 46 of the Illinois Statutes is unreasonable, arbitrary and unconstitutional; and that the electoral board acted without due process of law and without jurisdiction.

Plaintiff asks that an interlocutory injunction be issued, restraining the enforcement of the decision of the Cook County Electoral Board, and the printing of the ballots for the judicial election of November 3, 1953, and that a three-judge court be convened to pass upon the constitutionality of Section 10-2, Chapter 46 of the Illinois Election Code.

The matter is now before the court on plaintiff's motion for a temporary restraining order and the convening of a three-judge district court. Section 2281 of the Judicial Code, 28 U. S. C. A. § 2281, provides:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title."

This Section was added to the Judicial Code in 1948, and it is substantially similar to former Section 380 of Title 28. This former section has been construed by the Supreme

Court, on several occasions, and the Court has repeatedly held that Congress did not intend to prescribe the convening of a three-judge court whenever a complainant attacked the validity of a state statute. In short, an application for a three-judge court must be accompanied by a complaint which alleges a substantial federal question.

In Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., 292 U.S. 386 (1934), the Court stated:

> "The three-judge procedure is an extraordinary one, imposing a heavy burden on federal courts, with attendant expense and delay. That procedure designed for a specific class of cases, sharply defined, should not be lightly extended. . . . The limitations of the statute would be defeated where it enough to keep three judges assembled that a plaintiff could resort to a mere form of words in a complaint alleging that the suit is one to restrain action of state officers, with no support whatever in fact or law."

Again, in California Water Service Co. v. City of Redding, 304 U. S. 252 (1938), the Court made clear that it is "the duty of a district judge, to whom an application for an injunction restraining the enforcement of a state statute or order is made, to scrutinize the bill of complaint to ascertain whether a substantial federal question is presented, as otherwise the provisions for the convening of a court of three judges is not applicable." And, the court continues, "The lack of substantiality in a federal question may appear either because it is obviously without merit or because its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject."

With that language in mind, the court turns to the instant complaint. Plaintiff seeks to challenge the constitutionality of Section 10-2 of Chapter 46, Illinois Election Code. That Section prescribes the manner in which new political parties may be formed within Illinois; it provides (in part) as follows:

> "Any . . . petition for the formation of a new political party throughout the State, or in any such dis-

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> trict or political subdivision, as the case may be, shall declare as concisely as may be the intention of the signers thereof to form such new political party in the State, or in such district or political subdivision; shall state in not more than five (5) words the name of such new political party; shall contain a complete list of candidates of such party . . . and, if such new political party shall be formed for the entire State, shall be signed by not less than twenty-five thousand (25,000) qualified voters: Provided, that included in the aggregate total of twenty-five thousand (25,000) signatures are the signatures of two-hundred (200) qualified voters from each of at least fifty (50) counties within the State. If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than five (5) per cent nor more than eight (8) per cent of the number of voters who voted at the next preceding general election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area. . . ."

Plaintiff alleges in his complaint that he sought the formation of a new political party within Cook County, and that the electoral board found that his nominating petitions did not contain the signatures of at least 5% of the next preceding general election in Cook County, as required by Section 10-2. Plaintiff now complains that the requirements of Section 10-2 are arbitrary, unreasonable, and unconstitutional.

Section 10-2 has been challenged in the federal courts before; and it has survived the challenge. In 1948, a three-judge court was convened in this district on the application of several persons who were candidates of a new political party in Illinois known as the Progressive Party. An Illinois electoral board had held that the nominating petitions of these candidates did not include the signatures of 200 qualified voters from each of at least 50 counties within the

State, as required by Section 10-2. The three-judge court, after a review of the facts, entered these conclusions of law:

> "1. The provision of paragraph 2 of Article 10 (10-2, c. 46, Ill. Rev. Stat. 1947), requiring for a valid nominating petition at least two hundred signatures of qualified voters from each of at least 50 counties is not repugnant to, nor in violation of any provision of the Constitution of the United States, nor does it contravene section 16 Article II of the Constitution of Illinois.
>
> "2. This Court is without jurisdiction to examine or inquire into the decision of the Illinois State Officers' Electoral Board . . . and to heed that the Board's decision is null and void."

The three-judge court then refused to grant the requested injunctive relief. *MacDougall* v. *Green*, 80 Supp. 725. The denial of the injunction was then affirmed by the Supreme Court, 335 U. S. 281. The Supreme Court felt that:

> "It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny the State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States."

There were other questions in the record then before the Supreme Court; these same questions are raised in the instant complaint. The Supreme Court characterized those questions as "purely local . . . having no federal constitutional aspect."

In the opinion of the court, the MacDouglass decision is controlling here. True, plaintiff is not concerned with that portion of the statute which requires state-wide candidates of new parties to gather signatures in each of fifty counties

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(although he asserts the illegality of this requirement in his complaint); rather, petitioner is concerned only with the requirement that he have the signatures of a certain percentage of voters within Cook County. But if the MacDougall case dictates that the one requirement is valid, certainly it tells us that the less rigorous requirement which concerns plaintiff is also valid. In the light of the MacDouglass opinion, no court of this district, however constituted, may strike down Section 10-2.

Under the Illinois Election Code, the decision of an electoral board "shall be final". Ch. 46, § 10-10, Ill. Rev. Stat. Since the complaint fails to allege facts which would warrant holding that the decision of the board was arbitrary or capricious, that decision will not be disturbed. The board found that plaintiff failed to satisfy the requirements of Section 10-2; and the MacDouglass case holds that Section 10-2 is constitutional. It is therefore the duty of this court to hold that the complaint fails to allege a substantial federal question, and the court shall not take those steps necessary to convene a three-judge district court.

For the reasons stated, plaintiff's motion for a temporary restraining order is denied, and the complaint is dismissed.

(Which was all of the Court's ruling in the above entitled case.)

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 53 C 1939

PEOPLE OF THE STATE OF ILLINOIS on relation of George E. Sankstone, Plaintiff,

vs.

EDMUND K. JARECKI, County Judge, et al., Defendants

CERTIFICATE

I hereby certify that the above and foregoing transcript, pages Nos. 1 to 12, inclusive, is a full, true and accurate

transcript of the original shorthand notes of the Court's Ruling taken upon the hearing of the above-entitled cause on September 28, 1953.

(S.) PAUL A. RUHE,
Official Court Reporter,
United States District Court, Northern District of Illinois.

Dated: September 28, 1953.

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